

approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735 (October 4, 1993)) and 13563 (76 FR 3821 (January 21, 2011));
  - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
  - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
  - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
  - Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255 (August 10, 1999));
  - Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885 (April 23, 1997));
  - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355 (May 22, 2001));
  - Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
  - Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629 (February 16, 1994)).
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249 (November 9, 2000)).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen

dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 24, 2021.

**Walter Mugdan,**

*Acting Regional Administrator, EPA Region 2.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R02–OAR–2020–0301; FRL 10025–51–Region 2]**

### Approval of Air Quality Implementation Plans; New York; Infrastructure Requirements for the 2015 Ozone, National Air Quality Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve elements of New York’s State Implementation Plan (SIP) revisions, submitted to demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2015 Ozone National Ambient Air Quality Standards (NAAQS). Section 110(a) of the CAA requires that each state adopt and submit for approval into the SIP a plan for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA.

**DATES:** Comments must be received on or before August 2, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID Number EPA–R02–OAR–2020–0301 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For

additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>. To reduce the risk of COVID–19 transmission, for this action we will not be accepting comments submitted by mail or hand delivery.

All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) website. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically at [www.regulations.gov](http://www.regulations.gov). To reduce the transmission of COVID–19, we do not plan to offer hard-copy review of the docket for this action. Please email the person listed in the **FOR FURTHER INFORMATION CONTACT** if you need to make alternative arrangements for access to the docket.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

- I. What action is the EPA proposing?
- II. What is the background information?
- III. What is a section 110(a)(1) and (2) SIP?
- IV. What elements are required under section 110(a)(1) and (2)?
- V. What is the EPA’s approach to the review of infrastructure SIP submissions?
- VI. What did New York submit?
- VII. How has the State addressed the elements of the section 110(a)(1) and (2) “infrastructure” provisions?
- VIII. What action is the EPA taking?
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#### I. What action is the EPA proposing?

The EPA is proposing to approve elements of the State of New York Infrastructure State Implementation Plan (SIP) as meeting the section 110(a)(1) and (2) infrastructure requirements of the Clean Air Act (CAA) for the 2015 Ozone National Ambient Air Quality Standards (NAAQS or standard), except for the CAA section 110(2)(D)(i)(I) transport provisions which will be addressed in a separate action. As explained below, the EPA is proposing to find that the State has the necessary infrastructure, resources, and general authority to implement the standards noted above.

## II. What is the background information?

Section 110(a)(1) of the CAA requires states to submit for approval into the SIP, within 3 years after the promulgation of a new or revised NAAQS, a plan that meets the applicable requirements of section 110(a)(2). The EPA commonly refers to such state plans as “infrastructure SIPs.” The EPA promulgated a revised NAAQS for ozone in 2015 (“2015 Ozone”). 80 FR 65291 (October 26, 2015).

The New York State Department of Environmental Conservation (NYSDEC) submitted the following revisions to its Infrastructure State Implementation Plan (ISIP):

- 2015 Ozone ISIP submitted on September 25, 2018.
- The September 25, 2018 transmittal letter indicated that NYSDEC would be updating Element G, which includes updates to the Air Quality Index and Emergency Contract.
- The updated Element G was received, along with a letter to EPA Regional Administrator Peter D. Lopez on July 10, 2019, and is incorporated into this assessment by the EPA (which, together with the September 25, 2018 submittal, is referred to herein as the “submittal”).

## III. What is a section 110(a)(1) and (2) SIP?

Section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for “infrastructure” SIP requirements related to a newly established or revised NAAQS.

Sections 110(a)(1) and (2) of the CAA require, in part, that states submit to the EPA plans to implement, maintain, and enforce each of the NAAQS promulgated by the EPA. The EPA interprets this provision to require states to address basic SIP requirements, including emission inventories, monitoring, and modeling to ensure attainment and maintenance of the standards. By statute, SIPs meeting the requirements of section 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard.

## IV. What elements are required under section 110(a)(1) and (2)?

The infrastructure requirements of CAA sections 110(a)(1) and (2), relevant to this action, are discussed in the following EPA guidance documents: (1) The EPA’s October 2, 2007 memorandum entitled, “Guidance on

SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards;” (2) the EPA’s September 13, 2013 memorandum entitled “Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)” (2013 Guidance), which addresses the 2008 ozone, 2010 nitrogen dioxide (NO<sub>2</sub>), 2010 sulfur dioxide (SO<sub>2</sub>), and 2012 particulate matter (PM<sub>2.5</sub>) NAAQS, as well as infrastructure SIPs for new or revised NAAQS promulgated in the future.<sup>1</sup>

The EPA reviews each infrastructure SIP submission with the applicable statutory provisions of CAA section 110(a)(2). The 14 elements required to be addressed by CAA section 110(a)(2) are:

- 110(a)(2)(A): Emission limits and other control measures;
- 110(a)(2)(B): Ambient air quality monitoring/data system;
- 110(a)(2)(C): Program for enforcement of control measures and for construction or modification of stationary sources;
- 110(a)(2)(D)(i)(I) and (II): Interstate pollution transport;
- 110(a)(2)(D)(ii): Interstate and international pollution abatement;
- 110(a)(2)(E): Adequate resources and authority, conflict of interest, oversight of local governments and local authorities;
- 110(a)(2)(F): Stationary source monitoring and reporting;
- 110(a)(2)(G): Emergency powers;
- 110(a)(2)(H): Future SIP revisions;
- 110(a)(2)(I): Plan revisions for nonattainment areas (under part D);
- 110(a)(2)(J): Consultation with government officials, public notification, and PSD and visibility protection;
- 110(a)(2)(K): Air quality modeling and data;
- 110(a)(2)(L): Permitting fees;
- 110(a)(2)(M): Consultation/participation by affected local entities.

This proposed action will not address the section 110(a)(2)(D)(i)(I) (prongs 1 and 2) portions of the New York 2015 Ozone infrastructure SIP. The EPA will act on those portions of New York’s infrastructure SIP in a separate rulemaking action.

## V. What is the EPA’s approach to the review of infrastructure SIP submissions?

Whenever the EPA promulgates a new or revised NAAQS, CAA section

110(a)(1) requires states to make Infrastructure SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. These submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), the EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions.

The EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.<sup>2</sup> Unless otherwise noted below, we are following that existing approach in acting on these submissions. In addition, in the context of acting on such infrastructure submissions, the EPA evaluates the submitting state’s SIP for facial compliance with statutory and regulatory requirements, not for the state’s implementation of its SIP.<sup>3</sup> The EPA has other authority to address issues concerning a state’s implementation of its SIP.

## VI. What did New York submit?

NYSDEC submitted the following SIP submittals, which address the infrastructure requirements for the identified NAAQS:

- 2015 Ozone ISIP Revisions, submitted on September 25, 2018.
- 2015 Ozone ISIP Element G, submitted in a July 10, 2019 letter to Region 2 EPA Regional Administrator, Peter D. Lopez, entitled, “Revisions to Air Quality Index and Contacts” (which, together with the September 25, 2018 submittal, is referred to herein as the “submittal”).

New York’s Infrastructure SIP submittal demonstrates how the State, where applicable, has a plan in place that meets the requirements of section 110 for the 2015 Ozone NAAQS. The plan references the current New York Air Quality SIP, the New York Codes, Rules and Regulations (NYCRR), the New York Environmental Conservation

<sup>2</sup> The EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at [https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance\\_on\\_Infrastructure\\_SIP\\_Elements\\_Multipollutant\\_FINAL\\_Sept\\_2013.pdf](https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf)), as well as in numerous agency actions, including the EPA’s prior action on New York’s infrastructure SIP to address the Nitrogen Dioxide NAAQS, 79 FR 25066, 25067 (May 2, 2014).

<sup>3</sup> See the United States Court of Appeals for the Ninth Circuit’s decision in *Montana Environmental Information Center v. Thomas*, 902 F.3d 971 (Aug. 30, 2018).

<sup>1</sup> All referenced memoranda are included in the docket for today’s action.

Law (ECL), and the New York Public Officer's Law (POL). The NYCRR, ECL, and POL referenced in the submittal are publicly available. New York's SIP and air pollution control regulations that have been previously approved by the EPA and incorporated into the New York SIP can be found at 40 CFR 52.1670 and are posted on the internet at <https://www.epa.gov/sips-ny>.

## VII. How has the State addressed the elements of the section 110(a)(1) and (2) "infrastructure" provisions?

EPA addresses the infrastructure elements as follows:

*Element A: Emission Limits and Other Control Measures:* Section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means, or techniques, and schedules for compliance. In its submittal, the NYSDEC stated that regulations have been adopted under 6 NYCRR to limit emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compound (VOC) for purposes of attaining several ozone NAAQS. Regulations approved by EPA into the SIP are listed in a table under 40 CFR 52.1670(c), titled "EPA-Approved New York State Regulations and Laws." The NYSDEC submittal indicates that DEC's November 10, 2017 SIP submission for the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area (New York metropolitan area, or NYMA) for the 2008 ozone NAAQS identified the permanent and enforceable regulations that primarily yielded reductions of NO<sub>x</sub> and VOC emissions.<sup>4</sup> In its submittal, New York identifies provisions of its federally enforceable SIP that contain enforceable emission limits and other control measures, such as 6 NYCRR subpart 201–1.4(a), which states that each permitted facility shall take all necessary and appropriate actions to prevent exceedance of applicable emissions limits during periods of start-up, shutdown, or malfunction. Moreover, the NYSDEC's submittal states that it does not authorize any "director's variance" or "director's discretion" to allow revisions to or exemptions from SIP submission limitations without further public participation and approval from the EPA.

The SIP submittal does not account for additional NO<sub>x</sub> and VOC control measures needed to attain the 2015 Ozone NAAQS. NYSDEC stated in its submission that these control measures will be addressed in the New York

metropolitan area's ("NYMA") attainment SIP that is due by August 3, 2021.

The EPA is proposing to determine that New York has met the requirements of section 110(a)(2)(A) of the CAA with respect to the 2015 Ozone NAAQS based on the enforceable emission limits and other control measures in Title 6 of the NYCRR.

*Element B: Ambient air quality monitoring/data system:* Section 110(a)(2)(B) requires SIPs to include provisions to provide for the establishment and operation of ambient air quality monitors, to monitor, compile, and analyze ambient air quality data, and to make these data available to the EPA upon request. The NYSDEC submittal for the 2015 Ozone ISIP details the State's authority to adopt and enforce provisions of the SIP and to operate an ambient air quality monitoring network. The EPA proposes to find that these provisions demonstrate that NYSDEC has the requisite authority to support Element B. NYSDEC states that it will continue to operate an air quality monitoring network that complies with the EPA requirements and will submit this data to the EPA's Air Quality System (AQS). NYSDEC's submittal states that it monitors ozone at 28 sites across the State using continuous and/or manual instrumentation, in accordance with 40 CFR part 53 and 40 CFR part 58. These sites are part of the federally mandated network of NCore multipollutant sites (NCore), the State and Local Air Monitoring Stations (SLAMS) network, and Photochemical Assessment Monitoring Stations (PAMS), with additional VOC monitoring conducted through the EPA's National Ambient Air Toxics (NATTS) network.

*Authority:* New York's 2015 Ozone ISIP submittal states that while the NYSDEC does not have specific regulations authorizing monitoring activities, the operation of monitoring networks falls under the broad statutory authority granted to the agency and the Commissioner of the NYSDEC through New York's Environmental Conservation Law (ECL) section 1–0101 (declaring New York's policy to prevent air, water and land pollution), section 3–0301 (granting the NYSDEC Commissioner the power to monitor the environment and identify changes and conditions in ecological systems and to warn of emergency conditions), and section 19–0103 (declaring New York's policy to maintain a reasonable degree of purity of the air resources of the state and require the use of all available practical and reasonable methods to

prevent and control air pollution in New York).

### *Monitoring network:*

The NYSDEC operates API-T400 ozone monitors at 28 sites across the State. In addition to monitoring for ozone, the monitoring sites also monitor for ozone precursors (NO<sub>x</sub> and VOCs). The EPA's promulgation of the 2015 Ozone NAAQS altered PAMS requirements. The new rule requires that PAMS stations be located at urban sites with populations of greater than one million people regardless of attainment status. To comply with PAMS requirements, sites were originally established in Queens County (NYC) and Monroe County (Rochester). These two PAMS sites have been relocated with the EPA's approval. The Queens site was relocated to an existing PAMS site in the Bronx (NYC), and the Rochester site was relocated to a new site at the Flax Pond Marine Laboratory in Suffolk County on the Long Island Sound. The Flax Pond Marine Laboratory site will assist in monitoring the high ozone gradient across Long Island Sound.

### *Annual Monitoring Network Plan:*

The NYSDEC prepares an Annual Monitoring Network Plan (Plan) that describes in detail the specifics of the monitoring network as required by 40 CFR Section 58.10. The Plan is made available for public inspection and comment for at least 30 days and then submitted to the EPA Region 2 Regional Administrator for approval or disapproval. The 2020 Plan was submitted to the EPA on September 23, 2020, following public review, and the EPA approved all Ozone related monitoring activities on January 11, 2021. The NYSDEC ensures that New York will meet the monitoring requirements promulgated under the 2015 Ozone NAAQS.

The EPA is therefore proposing that New York has met the requirements of section 110(a)(2)(B) of the CAA with respect to the 2015 Ozone NAAQS based on the authority provided by the ECL and the operation of an EPA-approved ambient air monitoring network.

*Element C: Program for enforcement of control measures and for construction or modification of stationary sources:* Section 110(a)(2)(C) requires states to have a plan that includes a program providing for enforcement of all SIP measures and the regulation of the modification and construction of any stationary source, including a program to meet Prevention of Significant Deterioration (PSD) of Air Quality and minor source new source review. The

<sup>4</sup> [https://www.dec.ny.gov/docs/air\\_pdf/sip2008o3nymafinal.pdf](https://www.dec.ny.gov/docs/air_pdf/sip2008o3nymafinal.pdf).

three sub-elements of Element C are addressed below.

*Enforcement of SIP Measures:*

Statewide enforcement of new and modified sources, minor modifications of minor sources, and major modifications in areas designated as an attainment area or as an unclassifiable area for the 2015 Ozone NAAQS, is required by Title I of the Clean Air Act Part C (Major Sources of Prevention of Significant Deterioration). ECL section 19-0305 authorizes the NYSDEC Commissioner to enforce the codes, regulations, and rules duly promulgated or revised by the NYSDEC in accordance with Article 19 of the ECL. The New York federally approved SIP is a compilation of rules and procedures that have been duly promulgated by the NYSDEC in accordance with its statutory authority and consistent with the State APA. The NYSDEC has the authority to adopt all SIP measures. New York enforces emission limits and control measures through Title 21 of ECL article 71, "Enforcement of Article 19 and Air Pollution Emergency Rules and Regulations." 6 NYCRR part 201, entitled, "Permits and Regulations" also includes enforcement provisions. Specifically, subpart 201-1.13, entitled, "access to regulated facilities," grants representatives of the NYSDEC access in order to determine compliance with federal and state air pollution requirements, regulations or laws.

*Regulation of minor sources and minor modifications:*

The NYSDEC issues permits for minor sources of air pollution through 6 NYCRR Subpart 201-4 ("Minor Facility Registration") and Subpart 201-5 ("State Facility Permits"), and further regulates these sources through applicable state and federal regulations, including the SIP-approved 6 NYCRR Part 201, in order to control emissions of NO<sub>x</sub> and VOCs.

*Preconstruction PSD Permitting of Major Sources and Major Modifications:*

The NYSDEC has permitting authority under 6 NYCRR Part 231, "New Source Review for New and Modified Facilities" to implement the PSD program as required by the CAA Title 1 Part C for all sources subject to PSD in areas designated as in attainment or unclassifiable for the 2015 Ozone NAAQS. Part 231 of 6 NYCRR was revised in 2009 to comply with federal guidelines. This revision allowed the NYSDEC to resume administering the PSD program, which includes criteria pollutants (*i.e.*, all pollutants subject to a NAAQS, regulated under a New Source Performance Standard, or regulated under the CAA, with the exception of Section 112 Hazardous Air

Pollutants), which had been administered by the EPA since 2004. *See* 75 FR 70140 (Nov. 17, 2010).

6 NYCRR Part 231 also encompasses the regulation of greenhouse gases. The EPA approved the majority of this revised regulation into the New York SIP. (*see* 81 FR 95047 (Dec. 27, 2016)).

New York's 2015 Ozone ISIP submittal states that all applicable federal PSD requirements that are included in PSD permits are incorporated into Title V operating permits, and that all federally enforceable requirements are applied and enforced. In its submittal, New York affirms that the current NSR and PSD programs remain in effect and apply to the State's major stationary sources, and that the requirements of these programs are federally enforceable.

The EPA is proposing to determine that New York has met the requirements of section 110(a)(2)(C) of the CAA with respect to the 2015 Ozone NAAQS. The EPA proposes to find that the State has adequate authority and regulations to ensure that SIP-approved control measures are enforced. The EPA is proposing to find that New York has a SIP-approved minor new source review program. The EPA also proposes to find, based on the approval of New York's PSD program, that New York has the authority to regulate the construction of new or modified stationary sources to meet the PSD program requirements.

*Element D: Interstate transport:* CAA section 110(a)(2)(D)(i) consists of four separate elements, or "prongs." CAA section 110(a)(2)(D)(i)(I) requires SIPs to contain adequate provisions prohibiting emissions in amounts that will contribute significantly to nonattainment of the NAAQS in any other state (prong 1), and adequate provisions prohibiting emissions that will interfere with maintenance of the NAAQS by any other state (prong 2). CAA section 110(a)(2)(D)(i)(II) requires SIPs to contain adequate provisions prohibiting emissions in amounts that will interfere with any other state's required measures to prevent significant deterioration of its air quality (prong 3), and adequate provisions prohibiting emissions in amounts that will interfere with any other state's required measures to protect visibility (prong 4).

*Prongs 1 and 2: Significant Contribution To Attainment and Interference With Maintenance*

This proposed action will not address the portions of the New York 2015 Ozone infrastructure SIP concerning prongs 1 and 2. The EPA will act on these portions of New York's

infrastructure SIP in a separate rulemaking action.

*Prong 3: Interference With PSD*

Under section 110(a)(2)(D)(i)(II) (prong 3), SIPs must contain provisions prohibiting emissions in amounts that would interfere with measures required to be in any other State's SIP under CAA Part C to prevent the significant deterioration of air quality. To satisfy section 110(a)(2)(D)(i)(II), New York relies on its SIP-approved nonattainment NSR and PSD permitting programs, which are implemented through 6 NYCRR Part 231 to prevent significant deterioration of air quality within the state and other nearby states. New York has affirmed that new major sources and major modifications in New York are subject to the State's federally approved PSD program, which applies to all NSR-regulated pollutants, and satisfies the EPA's PSD requirements.

The EPA recognizes that sources in New York not subject to PSD because they are in a nonattainment area may also have the potential to interfere with PSD in an attainment or unclassifiable area of another state. The EPA will consider and may approve nonattainment NSR provisions in determining whether a SIP satisfies prong 3 with respect to sources located in areas subject to nonattainment NSR, and thus not subject to PSD permitting. However, SIP revisions to address nonattainment NSR requirements for any new or revised NAAQS are due on a separate timeframe under section 172(b) of the CAA and are not subject to the timeframe for submission of infrastructure SIPs under section 110(a)(1). Therefore, a fully approved nonattainment NSR program for any previous NAAQS may be considered by the EPA as adequate for purposes of meeting the requirement of prong 3. New York has a SIP-approved nonattainment NSR program that applies to all NSR-regulated pollutants, ensuring regulation of major sources and major modifications in nonattainment areas.

Accordingly, the EPA is proposing to approve the infrastructure SIP submission as meeting the applicable prong 3 requirements of section 110(a)(2)(D)(i)(II) for the 2015 Ozone NAAQS.

*Prong 4: Visibility*

In its 2015 Ozone ISIP submittal, New York has affirmed that the State has met its visibility obligations through its coordination with regional Class I area states within the framework of the Mid-Atlantic/Northeast Visibility Union (MANE-VU), and its applicable SIP

submissions, including its EPA-approved Regional Haze SIP, as well as SIP provisions that replaced a Federal Implementation Plan (FIP) for the Danskammer and Roseton Generating Stations. On August 28, 2012, the EPA approved New York's Regional Haze SIP submittal as part of New York's SIP (*see* 77 FR 51915).<sup>5</sup>

In New York's 2015 Ozone ISIP submittal, it noted that the five-year progress report SIP that it submitted on June 16, 2015 (and subsequently approved by EPA on September 29, 2017 (*see* 82 FR 45499)) demonstrates that New York continues to meet its obligations to reduce visibility-impairing pollutants.

The EPA is proposing that New York satisfies the section 110(a)(2)(D)(i)(II) requirement for visibility (or prong 4). New York addresses the visibility protection requirements for the 2015 Ozone NAAQS through its Regional Haze SIP, which ensures that emissions from sources within the State are not interfering with measures to protect visibility in other states.

*110(a)(2)(D)(ii): Interstate Pollution Abatement and International Transport Provisions*

CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). In assessing CAA section 110(a)(2)(D)(ii), we reviewed the information presented by New York in its 2015 Ozone infrastructure SIP submission, as well as relevant portions of the EPA-approved New York SIP.

Section 126(a) requires that SIPs mandate that new (or modified) major sources subject to PSD notify neighboring States of potential air pollution impacts. New York indicates that it has addressed this requirement through 6 NYCRR Paragraph 201–6.3(b)(1), which states: “The department

shall give notice of each draft permit to any affected state on or before the time that the department provides this notice to the public under the requirements of this Part or Part 621 of this Title.”

Section 126(b) allows states to petition the EPA Administrator for a finding that a source or group of sources interferes with its ability to attain or maintain the NAAQS in violation of section 110(a)(2)(D)(i), and section 126(c) discusses violations as a result of such a finding. The NYSDEC affirms that no source within New York State is the subject of an active finding under CAA section 126 with respect to the 2015 Ozone NAAQS.

Section 115, entitled, “International Air Pollution,” requires states to revise SIPs under certain conditions to alleviate international transport into another country. The NYSDEC has affirmed that there are no final findings under CAA section 115 against New York State with respect to the 2015 Ozone NAAQS.

New York's SIP currently meets the requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). Therefore, the EPA is proposing to approve the New York SIP as fully meeting the requirements of CAA section 110(a)(2)(D)(ii) for the 2015 Ozone NAAQS.

*Element E: Adequate Resources:* Section 110(a)(2)(E) requires each state to provide necessary assurances that the state will: (i) Have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of federal or state law from carrying out the SIP or portion thereof), (ii) will comply with the requirements respecting state boards under CAA section 128, and (iii) where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision. This element of the submittal is consistent with New York infrastructure submittals that the EPA has previously approved. *See, e.g.*, 78 FR 25236 (April 30, 2013) (proposal) and 78 FR 37122 (June 20, 2013) (final approval). The EPA proposes to approve the New York submittal for meeting the requirements of Section 110(a)(2)(E) for the 2015 Ozone NAAQS.

In the 2015 Ozone ISIP submittal, NYSDEC indicates that it receives both operating and capital funding through the federal and state government budget processes. Operating funds are allocated to DAR annually and are used for daily administrative expenses, including salaries, fringe benefits, and indirect as

well as non-personnel services such as travel, supplies, contracts, and equipment costs. DAR is allocated operating funds from the following funding sources: General Fund, Cooperative Agreements (*i.e.*, EPA sections 103 and 105 federal air pollution control grants), and the Clean Air Fund, which is comprised of the Title V and Mobile Source accounts.

Capital funds may also be allocated to DAR through the state government budget process. They may be used for the financing or acquisition of capital facilities such as the construction of an air monitoring site. DAR may be allocated capital funds from three sources: General Fund, Mobile Source Account, and Rehabilitation and Improvement.

In accordance with 40 CFR part 51 subpart O, “Miscellaneous Plan Content Requirements,” NYSDEC receives state and federal funding on a yearly basis. State funding is part of the state government budget process. Federal funding comes in the form of grants from EPA. Resources will be acquired at the one-, three- and five-year intervals from the same operating and capital funding sources detailed above.

NYSDEC stated that, at the time of proposal of this infrastructure SIP, DAR's operating budget is \$33.3 million dollars annually. The resources considered necessary for the next five years depend on negotiated labor union contracts, inflation, indirect costs, and fringe benefit rates determined by the New York State Office of the State Comptroller but will be no less than 33.4 million dollars annually. The projections regarding acquiring necessary resources depend on New York State and federal budget processes, especially for allocation of available grant funds.

The NYSDEC addressed sub-element (ii), concerning conflict of interest, specifically the requirement to comply with the requirements of CAA Section 128(a), in its 2015 Ozone ISIP submission. With respect to the requirement of CAA Section 128(a)(1), the NYSDEC explains that New York State has no board or body authorized to approve permits or enforcement orders under the CAA. With respect to the requirements of CAA Section 128(a)(2), the NYSDEC explains that on May 23, 2013 it submitted a copy of Public Officers Law (POL) Section 73–a, “Financial disclosure,” and 19 NYCRR Subpart 937.1(a), “Access to Publicly Available Records,” and that these provisions were incorporated into the New York SIP for the limited purpose of satisfying CAA section 128(a)(2). *See*, 78 FR 37122, 37122–

<sup>5</sup> In the August 28, 2012 rulemaking approving New York's Regional Haze SIP submittal, the EPA promulgated a partial FIP to address our disapproval of New York's Best Available Retrofit (BART) determinations for the Roseton Generating Station's Unit's 1 and 2 and Danskammer Generating Station's Unit 4. *See* 77 FR 51915 (August 28, 2012). The emission reductions under the FIP were not necessary to demonstrate that New York met its share of the emissions reductions needed to meet reasonable progress goals (found at 40 CFR 51.308(d)(1)) at Class I areas affected by New York's emissions. The EPA fully approved that aspect of New York's Regional Haze SIP in the August 2012 rulemaking. *See* 77 FR 51915. The FIPs for Danskammer and Roseton have subsequently been replaced by SIP provisions approved by the EPA for Danskammer (82 FR 57126 (December 14, 2017)) and Roseton (83 FR 6970 (February 16, 2018)).

37124 (June 20, 2013). EPA proposes to find that the requirements of section 110(a)(2)(E)(ii) are therefore satisfied.

The NYSDEC has addressed CAA section 110(a)(2)(E) sub-element (iii) by referencing its ECL sections 19–0305, 71–2103, and 71–2105 and explaining that these provisions authorize the NYSDEC Commissioner to enforce the codes, rules and regulations established in accordance with Article 19 (Air Pollution Control) and Article 71 (Enforcement). NYSDEC states that it therefore has the authority to enforce all approved SIP measures. NYSDEC clarifies that it has the sole responsibility for implementing the SIP, and that even if it were to rely on a local or regional government(s), it would retain responsibility for ensuring adequate implementation of the plan. Finally, NYSDEC cites POL section 73–a, “Financial disclosure,” and 19 NYCRR Part 937, “Access to Publicly Available Records.” NYSDEC states that EPA approved New York’s submissions for the 1997 8-hour ozone and 1997 and 2006 PM<sub>2.5</sub> NAAQS for sub-elements 110(a)(2)(E)(ii) and (iii) and that EPA approved POL sections 73–a(2)(a)(i) and (ii) and 19 NYCRR Subpart 937.1(a) into the New York SIP for the limited purpose of satisfying CAA section 128(a)(2). See 78 FR 37122–37124. EPA proposes to find that the requirements of 110(a)(2)(E)(iii) are satisfied.

The EPA proposes to approve the New York submittal pursuant to section 110(a)(2)(E) with respect to the 2015 Ozone NAAQS based on the demonstration of adequate resources and authority.

*Element F: Stationary Source Monitoring and Reporting:* Section 110(a)(2)(F) requires states to establish a system to monitor emissions from stationary sources and to submit periodic emission reports. This element of the submittal for the 2015 Ozone NAAQS is similar to New York infrastructure submittals that the EPA has previously approved. To emphasize the comprehensiveness of New York’s reporting system, the three sub-elements are described below.

*Sub-Element (i)—Testing, Inspection, Enforcement, and Compliance*

Pursuant to ECL section 19–0305(2), New York meets the requirement that each SIP provide a program for periodic testing and inspection of stationary sources, to identify allowable test methods, and to exclude any provision that would prevent the use of credible evidence of non-compliance. See 40 CFR 51.212. Moreover, 6 NYCRR Subpart 201–1.13 gives the NYSDEC access to regulated facilities, and 6

NYCRR Subpart 202–1 requires facility owners to conduct emissions tests according to specific procedures, provide notice to the NYSDEC in advance of the testing, and allows the NYSDEC to conduct separate emissions tests. The NYSDEC uses the enforceable test methods that are contained in 40 CFR part 51 Appendix M, “Recommended Test Methods for State Implementation Plans.” Pursuant to 40 CFR 51.212(c), the NYSDEC has certified that it does not preclude the use, including the exclusive use, of credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.

*Sub-Element (ii)—Requirements for Periodic Reporting*

The NYSDEC has authority to enforce federal emissions reporting and record-keeping regulations through ECL Section 19–0311, “Operating permit program for sources subject to the federal Clean Air Act.” In particular, ECL Section 19–0311 Subsection 3 provides requirements for detailed monitoring, record-keeping, and reporting, including that records be kept for five years, and that monitoring records be submitted to the NYSDEC at least every six months. These requirements are also contained in 6 NYCRR Subpart 201–6.2(d), which requires that all Title V facility permit applications provide for emissions monitoring, record-keeping, and reporting. In addition, major facility owners must report annual emissions to the NYSDEC pursuant to 6 NYCRR Subpart 202–2, “Emission Statements.”

*Sub-Element (iii)—Stationary Source Emission Inventories*

This sub-element requires the correlation of all state reports on emissions from stationary sources. This includes emission inventories based on actual emissions submitted and calculated through annual emission statements from minor stationary sources based on area sources.

*Procedures Established by the EPA*

The EPA’s Air Emissions Reporting Requirements (AERR) were promulgated in 2008, consolidating and streamlining the requirements of several older rules for states and local air pollution control agencies to submit emissions inventories for criteria pollutants to the EPA’s Emissions Inventory System (EIS). See 73 FR 76539 (December 17, 2008). The EPA uses these submissions, along with other data sources (primarily

for air toxics), to build the National Emissions Inventory (NEI).

The NYSDEC ensures compliance with the AERR through several regulations, including 6 NYCRR Section 201–5.3 (concerning facility permit conditions, including record-keeping and recording requirements), 6 NYCRR Section 201–6.4 (requiring Title V permits to incorporate all federal reporting requirements), and 6 NYCRR Subpart 202–2, “Emission Statements” (outlining emission reporting requirements for major sources and sources in ozone nonattainment areas emitting at least 25 tons-per-year of NO<sub>x</sub> or VOCs). The NYSDEC ensures that records are available for public review pursuant to 6 NYCRR Part 616, “Access to Records.”

The EPA proposes to approve the New York submittal pursuant to Section 110(a)(2)(F) with respect to the 2015 Ozone NAAQS based on the demonstration of adequate stationary source monitoring and reporting.

*Element G: Emergency power:* Section 110(a)(2)(G) (Element G) requires states to provide for emergency authority to address activities causing imminent and substantial endangerment to public health and requires states to submit adequate contingency plans to implement the emergency episode provisions in their SIPs.

The EPA requires that Infrastructure SIP submittals meet the applicable contingency plan requirements of 40 CFR part 51, subpart H (40 CFR 51.150 through 51.153) (“Prevention of Air Pollution Emergency Episodes”). Subpart H requires states that have air quality control regions identified as either Priority I, Priority IA, or Priority II to develop emergency episode contingency plans.

Articles 3 and 19 of the ECL provide New York State with the authority to address air pollution emergencies. ECL section 3–0301, entitled, “General functions power and duties of the DEC and the commissioner,” authorizes the NYSDEC to prevent and control air pollution emergencies as defined in ECL section 1–0303. ECL articles 3 and 19 are implemented through 6 NYCRR part 207, “Control Measures for Air Pollution Episodes,” which the EPA approved as part of the New York SIP. See 46 FR 55690 (November 12, 1981).

The EPA also notes that the NYSDEC has implemented 6 NYCRR Part 207 through Air Pollution Episode Procedures (APEPs), also called Alert Criteria (updated December 2018 and May 2019 at <http://www.dec.ny.gov/chemical/60440.html>).

As stated in its supplemental submittal dated July 10, 2019, the

NYSDEC has revised the Air Quality Index (AQI) reporting thresholds and related priority levels pursuant to the 2015 Ozone NAAQS and other NAAQS revisions to reflect 40 CFR part 58, Appendix G, Table 2, "Breakpoints for the AQI." The NYSDEC also updated its list of contacts and other relevant information. The July 2019 supplemental submittal indicates that the public was notified of the revisions through publication in the *Environmental Notice Bulletin* on May 22, 2019, and that no comments were received on the proposed submittal.

The EPA proposes that New York has met the requirements of section 110(a)(2)(G) for the 2015 Ozone NAAQS.

*Element H: Future SIP Revisions:* Section 110(a)(2)(H) requires states to have authority to revise their SIPs in response to changes in the NAAQS or availability of improved methods for attaining the NAAQS and whenever the EPA finds that the SIP is substantially inadequate. The EPA recognizes that the following provisions of the ECL provide the necessary authority for the NYSDEC to revise a SIP and provide for enforcement in response to revisions of the NAAQS, the availability of improved methods of attaining the NAAQS, or in response to a finding by the EPA that the SIP is substantially inadequate:

- 3-0301, "General functions, powers and duties of the department and the commissioner;"
- 19-0103, "Declaration of policy;"
- 19-0301, "Powers and duties;"
- 19-0303, "Codes, rules and regulations;"
- 19-0305, "Commissioner; enforcement power;"
- 71-2103, "Violations; civil liability;" and
- 71-2105, "Criminal liability for violations."

As the NYSDEC submittal explains, Article 19 of the ECL was adopted to protect New York's air resources from pollution and to effectuate the policy of the state to maintain a reasonable degree of purity of the air resources, consistent with public health and welfare and the industrial development of the state. To this end, the state legislature gave NYSDEC specific powers and duties, including the power to promulgate and revise regulations for preventing, controlling, or prohibiting air pollution. NYSDEC also has the specific authority to regulate motor vehicle exhaust, approve air contaminant control systems, and regulate fuels.

The EPA proposes to find that the SIP complies with the requirements of

section 110(a)(2)(H) for the 2015 Ozone NAAQS.

*Element I: Plan Revisions for Nonattainment Areas (under part D):* Section 110(a)(2)(I) provides that each plan or plan revision for an area designated as a nonattainment area shall meet the applicable requirements of part D of the CAA. EPA interprets section 110(a)(2)(I) to be inapplicable to the infrastructure SIP process because specific SIP submissions for designated nonattainment areas, as required under part D, are subject to a different submission schedule under subparts 2 through 5 of part D, extending as far as 10 years following area designations for some elements, whereas infrastructure SIP submissions are due within three years after adoption or revision of a NAAQS. Accordingly, EPA takes action on part D attainment plans through separate processes.

*Element J: Section 110(a)(2)(J): Consultation with Government Officials, Public Notification, and PSD and Visibility Protection:* Section 110(a)(2)(J) mandates that plans meet the requirements in CAA sections 121 (concerning consultation with government officials), 127 (concerning public notification), and Part C (relating to PSD and visibility protection).

#### *Consultation With Government Officials*

CAA Section 110(a)(2)(J) requires states to meet the applicable requirements of CAA section 121 relating to consultation. CAA section 121 requires states to provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments, Tribal Nations, Federal Land Managers (FLMs), and Regional Organizations.

Although there are no federal lands within New York State to which the state plan applies, the NYSDEC participates in the consultation process of the Regional Haze SIP with the FLMs, states, and Tribes within the Mid-Atlantic/Northeast Visibility Union (MANE/VU) and other regional planning organizations, and has committed to comply with 40 CFR 51.308 to provide FLMs an opportunity to meaningfully inform the long-term strategy.

On December 22, 2005, the NYSDEC established a SIP Coordinating Council, consisting of senior policy representatives from 19 state agencies and authorities, and a SIP Task Force, consisting of officials from 37 local governments and designated organizations of elected officials. The SIP Coordinating Council provides a means to keep state agencies and local

governments informed of planned SIP activities and deadlines, and also provides a forum for discussion of SIP requirements and implications, such as effects on transportation planning. The SIP Task Force provides a means of facilitating local involvement at the Metropolitan Planning Organization (MPO) and county levels. Periodic meetings of both groups are convened as necessary to address ozone SIP development and nonattainment of the ozone NAAQS and other revised standards.

The EPA proposes to find that New York has met the requirements of CAA section 110(a)(2)(J) for consultation with government officials.

#### *Public Notification*

CAA section 110(a)(2)(J) also requires state plans to meet the public notification requirements of CAA section 127: to notify the public if NAAQS are exceeded in an area, advise the public of health hazards associated with exceedances, and enhance public awareness of measures that can be taken to prevent exceedances and of ways in which the public can participate in regulatory and other efforts to improve air quality.

Ozone concentrations that have exceeded the 2015 Ozone NAAQS at any monitor state-wide are reported on the NYSDEC website, at <https://www.dec.ny.gov/chemical/38377.html>. Municipalities have emergency-response plans recommended by the New York State Office of Emergency Management and the Federal Emergency Management Agency that provide for public information and notification in the case of large-scale emergencies.

The NYSDEC's website at <https://www.dec.ny.gov/chemical/34985.html> contains an Air Quality Index (AQI) for reporting daily air quality to the public. It describes how clean or polluted the air is and what associated health effects might be a concern. The NYSDEC, in cooperation with the New York State Department of Health, posts warnings on the above-referenced website and issues press releases to local media outlets if dangerous conditions are expected to occur. These warnings are also available on the NYSDEC's toll-free Air Quality Hotline at (800) 535-1345. The Air Quality Index displays the predicted AQI value for the eight regions in New York State. It also displays the observed values for the previous day. Real-time monitoring data are also available on an individual monitor basis on the NYSDEC's air monitoring website. "Department of Environmental Conservation Air Monitoring website," <http://>



[www.nyaqinow.net/](http://www.nyaqinow.net/). Air quality measurements from New York's continuous monitoring network are updated hourly where available. Parameters monitored include ozone, fine particulate, carbon monoxide, sulfur dioxide, nitrogen oxides, methane/hydrocarbons, and meteorological data. The NYSDEC also provides ozone-specific information on its website, including the health-related effects of ozone pollution, at <https://www.dec.ny.gov/chemical/8400.html>. It also includes general measures the public can take to help reduce the formation of ozone, at <https://www.dec.ny.gov/chemical/8554.html>.

As described in the New York State Administrative Procedure Act (APA), and as required by 40 CFR 51.102, the NYSDEC must provide appropriate notice of each major SIP revision, and the public is afforded the opportunity to participate in the regulatory process by submitting written comments and petitioning for a public hearing on such revisions.

The EPA proposes to find that New York has met the requirements of CAA section 110(a)(2)(j) for public notification.

#### *Prevention of Significant Deterioration*

As detailed in the discussion of Element C, above, New York has a SIP-approved PSD/NSR program that covers all criteria pollutants and greenhouse gases, including ozone, which is contained in 6 NYCRR Part 231, "New Source Review for New and Modified Facilities," and which was approved by the EPA on November 17, 2010 (75 FR 70142). 6 NYCRR Part 231 regulates major sources under NSR (when the source is located in a nonattainment area) and PSD (when the source is located in an attainment area).

The EPA proposes to approve New York's infrastructure SIP with respect to the requirements of the PSD sub-element of CAA section 110(a)(2)(j).

#### *Visibility Protection*

Visibility Protection and regional haze program requirements under section 169A and B of Part C are being met by the NYSDEC through separate efforts. In the event of the establishment of a new NAAQS, the visibility and regional haze program requirements under Part C do not change. As noted in the EPA's 2013 guidance, we find that there is no new visibility obligation triggered under section 110(a)(2)(j) when a new NAAQS becomes effective. There are thus no new applicable visibility protection obligations under section 110(a)(2)(j) resulting from the 2015 Ozone NAAQS revision, and the EPA is therefore not

acting on the visibility aspect of Element J.

*Element K: Air Quality Modeling/Data:* Section 110(a)(2)(K) requires that SIPs provide for air quality modeling for predicting effects on air quality of emissions from any NAAQS pollutant and submission of such data to the EPA upon request. The infrastructure SIP submittal affirms that the modeling procedures are in accordance with 40 CFR part 51, Appendix W, also known as the Guideline on Air Quality Models. The NYSDEC submittal cites 6 NYCRR Part 200.6, which defines "Acceptable ambient air quality," in support of its position that "when a new major source of emissions is coming online or an existing source is undertaking a modification that would lead to a significant increase in its potential to emit, NYSDEC will use modeling as necessary to affirm that compliance with the ozone NAAQS will be maintained." The submittal also cites 6 NYCRR 231–12, "Ambient Air Quality Impact Analysis," which sets forth the procedures and requirements for an air quality impact analysis. The NYSDEC submittal certifies that air quality modeling and analysis complies with the latest EPA guidance on the use of models in attainment demonstrations, and commits to continue to use air quality models in accordance with EPA's approved modeling guidance and to submit data to the Administrator if requested.

*Element L: Permitting Fees:* Section 110(a)(2)(L) requires SIPs to mandate that each major stationary source pay permitting fees to cover the cost of reviewing, approving, implementing, and enforcing a permit, until such time as the SIP fee requirement is superseded by the EPA's approval of the state's operating permit program. New York has an approved Title V operating permit program. 67 FR 5216 (February 5, 2002); *see also* 66 FR 63180 (Dec. 5, 2001); 61 FR 57589 (Nov. 7, 1996). The NYSDEC submittal identifies the following statutory and regulatory provisions that provide for the collection of permitting fees: ECL section 72–0302, "State air quality control fees" states that those who are required to obtain a permit, certificate or approval must submit to NYSDEC a per emission point fee; ECL section 72–0303, "Operating permit program fees," establishes a base fee; 6 NYCRR subpart 482–2, as revised effective June 17, 2018, and promulgated pursuant to the statutory authority granted to NYSDEC under ECL 72–0303, establishes an annual fee; and 6 NYCRR subpart 201–6.4(a)(7) which provides that the owner and/or operator of a stationary source

will pay the fees to NYSDEC consistent with the fee schedule established in 6 NYCRR subpart 482–2. The EPA is proposing to approve this Element.<sup>6</sup>

*Element M: Consultation/Participation by Affected Local Entities:* Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

The submittal provides information regarding the NYSDEC's authority to provide for consultation and participation in SIP development, in support of the EPA's proposed approval of this element. The submittal identifies the SIP Task Force, consisting of officials from 37 local governments and designated organizations of elected officials, which the NYSDEC utilizes as necessary for consultation on plans. Participation by local entities, as well as the public, is provided through 6 NYCRR Part 617, "State Environmental Quality Review."

#### **VIII. What action is the EPA taking?**

In summary, the EPA is proposing approval of the following elements and sub-elements of New York's Infrastructure SIP submittal for 2015 Ozone NAAQS: Section 110(a)(A) [emission limits and other control measures]; 110(a)(2)(B) [ambient air quality monitoring/data system]; 110(a)(2)(C) [program for enforcement of control measures and for construction or modification of stationary sources]; 110(a)(2)(D) [interstate pollution transport (sub-elements addressing PSD, visibility, and interstate and international pollution abatement only)]; 110(a)(2)(E) [adequate resources, state boards/conflict of interest, oversight of local governments and local authorities]; 110(a)(2)(F) [stationary source monitoring]; 110(a)(2)(G) [emergency power]; 110(a)(2)(H) [future SIP revisions]; 110(a)(2)(J) [consultation with government officials, public notification, and PSD]; 110(a)(2)(K) [air quality and modeling/data]; 110(a)(2)(L) [permitting fees]; and 110(a)(2)(M) [consultation/participation by affected local entities].

As previously stated, this proposed action does not address the section 110(a)(2)(D)(i)(I) (prongs 1 and 2) portions of the New York 2015 Ozone infrastructure SIP. The EPA will act on these portions of New York's infrastructure SIP in a separate rulemaking action. For the reasons

<sup>6</sup> Due to State revisions to 6 NYCRR 201–6, section 201–6.5(a)(7) in the EPA-approved New York Title V program is now numbered in the State's regulation as 6 NYCRR 201–6.4(a)(7).



provided in the discussion above, Element I and the visibility aspect of Element J are not being addressed.

The EPA is soliciting public comments on the issues discussed in this proposal. These comments will be considered before the EPA takes final action. Interested parties may participate in the federal rulemaking procedure by submitting comments electronically following the directions in the **ADDRESSES** section of this **Federal Register**.

## IX. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR. 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735 (October 4, 1993)) and 13563 (76 FR 3821 (January 21, 2011));
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, (August 10, 1999));
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885 (April 23, 1997));
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355 (May 22, 2001));
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629 (February 16, 1994)).

This proposed rulemaking pertaining to New York's section 110(a)(2) infrastructure requirements for the 2015 Ozone NAAQS is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (*see* 65 FR 67249 (November 9, 2000)).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds, Nitrogen oxides.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: June 23, 2021.

**Walter Mugdan,**

*Acting Regional Administrator, EPA Region 2.*

[FR Doc. 2021-14057 Filed 6-30-21; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R02-OAR-2020-0466, FRL 10025-61-Region 2]

### Approval of Air Quality Implementation Plans; New York; Part 212, Process Operations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a revision to the New York State Implementation Plan concerning process operations. The intended effect of this revision is to streamline and update provisions, align those provisions with permitting regulations, and provide regulatory certainty for the regulated community. New York's comprehensive submittal also included Operating Permit Program requirements; however, the EPA will be acting on these revisions under a separate action. **DATES:** Comments must be received on or before August 2, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID number EPA-R02-OAR-2020-0466, at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

### FOR FURTHER INFORMATION CONTACT:

Marina Cubias-Castro, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, New York 10007-1866, (212) 637-3713, or by email at [castro.marina@epa.gov](mailto:castro.marina@epa.gov).

### SUPPLEMENTARY INFORMATION:

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- I. Background
- II. EPA's Evaluation of New York's Submittal
- III. Proposed Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

#### I. Background

The Environmental Protection Agency (EPA) proposes to approve New York's State Implementation Plan (SIP) submittal consisting of revisions to Title 6 of the New York Codes, Rules and Regulations (6 NYCRR) Part 212, now entitled, "Process Operations," which applies to process emission sources and/or emission points associated with a process operation, and which will streamline and update provisions, align those provisions with permitting regulations, and provide regulatory certainty for the regulated community. In addition, attendant revisions were made to 6 NYCRR Part 200, "General Provisions," in order to add a new Subdivision (cy) to define "Polychlorinated Dibenzo-para-dioxins and Polychlorinated Dibenzofurans" to Section 200.1. The EPA is proposing to approve these revisions, requested by